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CHARLES ELMORE CROPLEY
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 454

MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY, PETITIONER,

vs.

JOHN ROCK, RESPONDENT.

REPLY BRIEF OF PETITIONER.

Application to the appellate court for a certificate of importance in a case of this character would have been a useless formality. In an analogous case under the Federal Employers' Liability Act, Kenna *vs.* Calumet Railway, 206 Ill. App. Ct. Repts., 17, at 44, that court denied a certificate of importance on the ground that the application to the Supreme Court of Illinois for certiorari was the correct procedure. This negatives the idea that both applications should be made. The court there said:

> "This method of review was provided primarily for cases not otherwise reviewable, and while there are exceptions to the general rule,

> we see no reason why the appellant in the instant case should not make its application to the Supreme Court for a writ of certiorari."

There is no warrant for assuming that an exception to the above rule would be made in our case, since it is essentially analogous to the above case in which the rule was enforced. Moreover the Illinois Supreme Court declared, in Soden *vs.* Claney, 269 Ill., 98, that, whereas its denial of certiorari does not necessarily mean an approval of the reasons on which the appellate court based its judgment, still "it is an approval of the conclusion reached and is therefore in effect an affirmance of the judgment."

Thus the denial of certiorari in our case by the Supreme Court of Illinois was, in effect, a final judgment by the highest court of the State, and since the record is in that court, this Court has jurisdiction to issue a writ of certiorari to that court.

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